IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 131 of 1992
to
INCOME TAX REFERENCE No 131-D OF 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

SARABHAI PVT. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 131 of 1992
MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 16/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee as well as the revenue, the following questions have been referred to this court in all these matters for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B', under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Years 1972-73, 1976-77 and 1977-78.

At the instance of the Revenue

For Assessment Year 1976-77

"Whether the Appellate Tribunal is right in law and on facts in confirming the order made by the CIT(A) wherein he had directed the ITO to allow depreciation on assets used in providing services?"

For Assessment Year 1977-78

"Whether the Appellate Tribunal is right in law and on facts in confirming the order made by the CIT(A) wherein he had directed the ITO to allow depreciation on assets used in providing services?"

For Assessment Year 1972-73

"Whether the Appellate Tribunal is right in law and on facts in holding that income by way of rent was chargeable as income from house property and income derived by providing services will be chargeable as income from other sources under the provisions of sec. 56 and 57 of the I.T. Act?"

At the instance of the Assessee

For Assessment Year 1972-73

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that income derived by providing various services to the tenant were not composite and were not assessable as profits and gains of business u/s 28 of the I.T. Act?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance of repairs made by the assessee to the tune of Rs. 2,45,826/-?

2. We have heard Sr. Standing Counsel Shri M.R. Bhatt for the applicant-Revenue and learned advocate Shri Bhargav Karia for the respondent assessee.

3. The learned advocates have submitted that the controversy involved in these matters has been resolved by this court in I.T.R. No. 134 of 1988 decided on 21.11.2002. It has been further submitted by them that for the same years another reference application had also been filed as some proceedings had arisen u/s 154 of the Act and, therefore, for the same assessment year, different reference applications have been filed.

4. The facts giving rise to the present controversy are as under :

5. The assessee owned a building, which was given on rent. In addition to giving the building on rent, the assessee had rendered certain services in the nature of house keeping, canteen facilities etc. to the tenants and the assessee used to get amount not only towards rent but also towards services rendered by it.

6. The question was whether the amount, which was received by the assessee, should be taxed as "income from house property" or "income from other sources" or "income from profits and gains of business or profession".

7. After considering the facts of the case and looking at the law laid down by the Hon'ble Supreme Court, in I.T.R. No. 134/88 this court held that the amount of rent, which the assessee had received, should be treated as 'income from house property', whereas the amount, which the assessee had received towards services rendered to its tenants, should be treated as 'income from profits and gains of business or profession' because the assessee was in the business of leasing its

properties and was also rendering services to its tenants as a part of its business.

8. In view of the facts stated hereinabove and in view of the judgment dated 21.11.2002 delivered in I.T.R. No. 134/88, we answer the questions raised in these matters as under :

9. So far as the two identical questions pertaining to A.Y. 1976-77 and 1977-78 raised at the instance of the revneue are concerned, we answer both the questions in the affirmative, i.e., in favour of the assessee and against the revenue, however, we clarify that the assessee would be entitled to claim the depreciation from the income arising under the head 'profits and gains of business or profession' instead of income under the head 'income from other sources'.

10. So far as the question, which pertains to A.Y. 1972-73 referred to us at the instance of the revenue is concerned, we answer the same partly in the affirmative and partly in the negative. So far as the decision of the Tribunal with regard to treating the income of rent under the head 'income from house property' is concerned, we decide the same in the affirmative i.e. in favour of the revenue and against the assessee, whereas we opine that the income, which the assessee received by rendering services to its tenants, should be treated as income received under the head 'profits and gains of business or profession'. Thus, so far as the second portion of the said question is concerned, it is decided in the negative, i.e, against the revenue and in favour of the assessee.

11. So far as the first question, which has been referred to us at the instance of the assessee is concerned, we answer the same in the negative, i.e., in favour of the assessee and against the revenue for the reason that the said income would be chargeable under the head 'profits and gains of business or profession' for the reasons given hereinabove.

12. So far as the second question, which has been referred to us at the instance of the assessee for the A.Y. 1972-73 is concerned, we decide the same in the negative holding that the assessee is entitled to claim the amount of repairs by way of deduction from its income. However, we leave it to the Tribunal to decide as to whether the amount of repairs was pertaining to the building or to the assets, which were necessary for the purpose of rendering services to the tenants. Looking to

the nature of the repairs, the Tribunal shall allow the deduction from the income arising under a particular head of income.

All the references stand disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

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